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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/649,490	08/27/2003	Patricia L. Herzog-Mesrobian	773.003	5870

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BOYLE FREDRICKSON NEWHOLM STEIN & GRATZ, S.C.  
250 E. WISCONSIN AVENUE  
SUITE 1030  
MILWAUKEE, WI 53202

EXAMINER

GELLNER, JEFFREY L

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/649,490

Applicant(s)

HERZOG-MESROBIAN ET AL.

Examiner

Jeffrey L. Gellner

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11, 16-27, 29-33, 36, 57, 59-70, 72, 73 and 75-77 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 16-27, 29-33, 36, 57, 59-70, 72, 73, 75-77 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Objections*

Claim 29 is objected to because of the following informality:

In claim 29, line 1, the “means of applying” should be --means for applying-- so as to conform with the language of claim 1 and 35 USC 112 6<sup>th</sup> para.

Appropriate correction is required.

### *Claim Rejections - 35 USC §103*

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 16-18, 29-33, 36, 57, 59-70, 72, 73, and 75-77 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974; 3<sup>rd</sup> document listed on Applicant's 1449) in view of Rusert et al. (US 6,371,645 B1).

As to claims 1, 29, 30, 76, and 77, Herzog-Mesrobian et al. discloses an apparatus Figs. 1-43) for containing a plant comprising a sleeve (Figs. 1-5 and 22-24); a means for securing the sleeve to a vessel (friction fit from fabric used at col. 3 lines 7-10). Not disclosed is a means for applying ornamentation to the sleeve the means for applying being adhesive or stitching, the ornamentation by placing another layer over the sleeve, and the ornamentation including text.

Rusert et al., however, discloses an apparatus that is capable of containing a pot (see Figs. 1 and

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2) with means for applying ornamentation (“label or band” of col. 3 lines 14-20) that is adhesive or stitching (col. 3 lines 14-20) and the ornamentation including text (“preprinted” of col. 3 lines 14-20). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the apparatus of Herzog-Mesrobian et al. by adding a ornamentation with a means of applying an ornamentation of text as disclosed by Rusert et al. so as to communicate emotion or advertisement to the consumer.

As to claims 2,6, and 7, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the means for securing as a fastener (74 of Fig. 5 of Herzog-Mesrobian et al.) and the ornamentation being a removable film (“thermoplastic band” of col. 10 lines 5-11 of Rusert et al.).

As to claims 3 and 4, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a pot or a saucer (Figs. 1 and 2 of Herzog-Mesrobian et al.).

As to claim 5, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a top portion (region around 70 of Fig. 5 of Herzog-Mesrobian et al.) and a bottom portion (72 of Fig. 2 of Herzog-Mesrobian et al.).

As to claims 8 and 9, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a sleeve with two ends and a zipper fastener (Fig. 22 of Herzog-Mesrobian et al.).

As to claim 16, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve stretchable in a direction (col. 2 lines 54-65 of Herzog-Mesrobian et al.).

As to claim 17, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve stretchable in two directions (col. 2 lines 54-65 of Herzog-Mesrobian et al.).

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As to claim 18, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a polyurethane coating (col. 3 lines 7-20 of Herzog-Mesrobian et al.).

As to claim 31, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose a vessel made of clay (in that "standard sized" pots are clay of col. 2 lines 64-66 of Herzog-Mesrobian et al.).

As to claims 32 and 33, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve fitting around a pot (Figs. 1 and 2 of Herzog-Mesrobian et al.) and elastic (col. 2 lines 44-45 of Herzog-Mesrobian et al.).

As to claim 36, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve with horizontal inner lips at the upper and lower portions (70 and 72 of Figs. 2 and 5 of Herzog-Mesrobian et al.).

As to claim 57, the limitations of Claim 33 are disclosed as described above. Not disclosed is the sleeve holding pieces of the pot assembled condition and the method of repairing cracks by pulling away the sleeve. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. by using cracked pots so as to recycle material and to repair cracked pots so as to recycle material.

As to claim 59, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve with a hoop direction and an axial direction and axial edges (Figs. 22-26 of Herzog-Mesrobian et al.).

As to claim 60-64, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the sleeve stitched together (Fig. 22 of Herzog-Mesrobian et al.), releasably attached with a

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zipper (Fig. 23 of Herzog-Mesrobian et al.), and hook and loop (Fig. 24 of Herzog-Mesrobian et al.) with a liner (Fig. 25 of Herzog-Mesrobian et al.).

As to claims 65 and 66, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose an upper circumferential reach wedged between sleeve (Fig. 25 of Herzog-Mesrobian et al.) and attached to the upper portion (Fig. 25 of Herzog-Mesrobian et al.).

As to claims 67 and 68, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose as sleeve with a clip (Fig. 26 of Herzog-Mesrobian et al.).

As to claims 69 and 70, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose an inner lip with circumferential rim and fold back portion (Figs. 27-30 of Herzog-Mesrobian et al.).

As to claims 72 and 73, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the profile being frustconically upwardly with width D1 and D1 greater than KXA; downwardly with width D2 and D2 less than KxB (col. 6 lines 25-51 of Herzog-Mesrobian et al.); and the additionally extending profile by extending D1 and D2 left-right (col. 6 lines 25-51 of Herzog-Mesrobian et al.).

As to claim 75, Herzog-Mesrobian et al. as modified by Rusert et al. further disclose the contracted arc parallel to the first arc and the extended arc parallel to the second arc (col. 7 lines 43-44 of Herzog-Mesrobian et al.).

Claims 10, 11, 19-27 are rejected under 35 U.S.C. §103(a) as being unpatentable over Herzog-Mesrobian et al. (US 6,108,974) in view of Rusert et al. (US 6,371,645 B1) in further view of Gilbert (US 6,505,425 B1).

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As to claims 10, 11, and 19-27, the limitations of claim 7 are disclosed and described above. Not disclosed is the ornamentation being a message for a holiday, or special event, or relating to a specific individual, or advertising that relates to a specific company with a logo or graphic or photo. Gilbert, however, discloses ornamentation with indicia of a holiday, or special event, (see Figs. 1 and 2 of Gilbert) which would relate to a specific individual, or of advertising (col. 2 lines 12-19 of Gilbert) which would relate to a specific company and include a logo, graphic or photo. It would have been obvious to one of ordinary skill in the art at the time of the invention to further modify the apparatus of Herzog-Mesrobian et al. as modified by Rusert et al. by adding indicia of a holiday or of advertising to the ornamentation as disclosed by Gilbert so as to increase interest in the apparatus by the consumer.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-11, 16-27, 29-33, 36, 57, 59-70, 72, 73, and 75-77 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

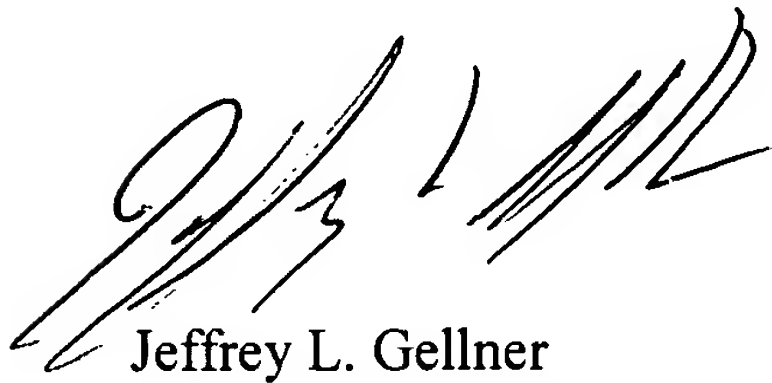
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mazzenga discloses in the prior art an ornamentation which is sewed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey L. Gellner whose telephone number is 571.272.6887. The examiner can normally be reached on Monday-Friday, 8:30-4:00, alternate Fridays off, if attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter

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Poon can be reached on 571.272.6891. The fax phone number for the organization where this application or proceeding is assigned is 571.273.8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'J. L. Gellner', with a stylized flourish at the end.

Jeffrey L. Gellner  
Primary Examiner  
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